BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services	Rulemaking 12-12-011 (Filed December 20, 2012)

APPLICATION OF UBER TECHNOLOGIES, INC., RASIER-CA, LLC, UBER USA, LLC, AND UATC, LLC FOR REHEARING OF DECISION 18-04-005

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

California Public Utilities Commission Decisions & Rulings

Briefs Filed in the California Public Utilities Commission

Statutes

California Public Utilities Code

California Public Utilities Commission Rules

Regulations

Constitutional Provisions

Miscellaneous

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure and California Public Utilities Code § 1731, Uber Technologies, Inc. ("UTI"), Rasier-CA, LLC ("Rasier-CA"), Uber USA, LLC ("Uber USA"), and UATC, LLC ("UATC") respectfully request that the Commission grant a rehearing of *Decision on Phase III.B. Tracks II And IV Issues: Is Uber Technologies, Inc., A Transportation Network Company and/or a Charter Party Carrier*, Decision ("D.") 18-04-005, issued on May 4, 2018 (the "Decision").

The Commission should grant a rehearing of the Decision for three reasons:

First, the Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion when it concluded that UTI is a Transportation Network Company ("TNC") under the plain meaning of Public Utilities Code § 5431(c). The Commission similarly erred when it misapplied the alter-ego doctrine to reach a finding that UTI is a TNC based on the operations of its subsidiary, Rasier-CA.[1] The Commission has not used this alter-ego reasoning in other regulated contexts,

[1] Pub. Util. Code § 1757.1(a)(1)-(2), (4)-(5).

evidencing the arbitrary and capricious nature of the Decision here.

Second, the Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion when it concluded that UTI is a Transportation Charter Party Carrier ("TCP") under the plain meaning of Public Utilities Code § 5360. The Commission similarly erred when it misapplied the alter-ego doctrine to conclude that UTI is a TCP based on the operations of its subsidiaries, Uber USA and UATC.[2]

Third, the Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, made unsupported findings, abused its discretion, and violated UTI's rights to due process under the United States and California Constitutions by straying outside the established scope of this quasi-legislative proceeding to order that UTI pay fines and back fees.[3]

For these reasons, and for the additional reasons explained below, the Commission should grant this Application, and should grant oral argument on and rehear this matter.[4]

II. BACKGROUND

A. The Commission Correctly Determined in 2013 that UTI Is Not a Transportation Network Company (TNC).

In September 2013, the Commission issued a decision adopting new rules and regulations applicable to companies that provide prearranged transportation services through an online platform.[5] The Commission labeled this type of company a "TNC," which it categorized as a

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[2] *Id.* § 1757.1(a)(1)-(2), (4)-(5).

[3] *Id.* § 1757.1(a)(1)-(5).

[4] *See* Rule 16.3(a); *see infra* § V.D.

[5] D.13-09-045, *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry,* mimeo at 2 ("2013 TNC Decision").

subclass of TCPs and defined as "an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online-enabled app or platform to connect passengers with drivers using their personal vehicles."[6]

The Commission required TNCs to comply with new rules and regulations, such as obtaining a permit from the Commission, performing criminal background checks for driver-partners, maintaining insurance coverage, and implementing a policy on drug and alcohol use.[7]

In the 2013 TNC Decision, the Commission asserted general jurisdiction over UTI because the Commission determined that UTI "is the means by which the transportation service is arranged" (*i.e.*, UTI develops the Uber App software it licenses to various subsidiaries, such as Rasier-CA).[8] But in defining TNCs, the Commission specifically found UTI was ***not*** a TNC, while "UberX" (*i.e.*, Rasier-CA) was.[9]

In its 2013 TNC Decision the Commission incorrectly identified the names of the specific UTI subsidiaries that the Commission determined was providing TNC services and may be providing TCP services.[10] But the Commission correctly determined there were two distinct entities and only one of the entities was a TNC.[11] In addition, the Commission reserved the

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[6] *Id.* mimeo at 24.

[7] *Id.* mimeo at 26-35.

[8] *Id.* mimeo at 12.

[9] In its 2013 TNC Decision, the Commission found that "UberX" provided TNC services in California rather than the correct entity, Rasier, LLC, and then later Rasier-CA, LLC.

[10] In its 2013 TNC Decision, the Commission found that "Uber" may be providing TCP services rather than the correct entity, Uber USA, LLC.

[11] *Id.* mimeo at at 24, 68 (Finding of Fact ("FOF") No. 25) ("With this definition in mind, the Commission finds that Uber . . . is not a TNC.")

question whether UTI is a TCP for a subsequent phase of the rulemaking process.[12]

B. The Commission Previously Declined to Regulate both the Parent UTI and the Subsidiary Rasier-CA for the Same Services.

In its application for rehearing of the 2013 TNC Decision, UTI challenged the Commission's categorization of "UberX" (a product platform) as a TNC, and explained that the correct entity to regulate as a TNC was UTI's subsidiary, Rasier-CA.[13] The Commission granted UTI's application and explained that rehearing was necessary to identify which of UTI's corporate entities meets the definition of a TNC:

> We concede that we have scant information in this proceeding regarding the structure of Uber, any subsidiaries and their roles, and Uber has provided few citations on this subject in its application for rehearing. For this reason, rehearing on the issue of which portion or subsidiary of Uber is a TNC is warranted.[14]

When modifying the 2013 TNC Decision, the Commission also implemented additional insurance requirements for TNCs and to further define the type of services offered by such companies. The question arose whether UTI should be required to comply with such modified insurance requirements. As the Commission noted, "Uber disagrees [that such additional insurance should apply to UTI], reasoning that as the TNC insurance requirements already apply to Uber's TNC subsidiary, Rasier-CA LLC, there is no need to apply them to Rasier's parent entity, Uber."[15]

The Commission was "persuaded by Uber's comments" and explained, "[t]he fact of the matter is that ***Uber has multiple transportation offerings, however, only UberX (Rasier[-CA])***

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[12] *Id*.

[13] *App'n of Uber Technologies, Inc. for Reh'g of D.13-09-045* (Oct. 23, 2013).

[14] D.14-04-022, *Order Granting Limited Rehearing of Decision 13-09-045, Modifying Certain Holdings, and Denying Rehearing of the Remaining Portion of the Decision, As Modified*, mimeo at 19.

[15] D.14-11-043, *Decision Modifying Decision 13-09-045*, mimeo at 17 ("Modified TNC Decision").

provides TNC services."[16] Since 2013, there has been no change in UTI or Rasier-CA's business operations or the applicable definition of TNC that would cause the Commission's prior decision to change.

C. UTI Has Previously Explained its Corporate Structure, Subsidiaries, and the Operations of UTI and its Subsidiaries.

On June 3, 2015, the Commission requested that UTI produce additional information about the corporate structure of UTI's entities.[17] In response, UTI explained that Rasier-CA is a wholly-owned subsidiary of Rasier, LLC ("Rasier"), and that Rasier is a direct wholly-owned subsidiary of UTI.[18]

As UTI further explained, it does not provide transportation services. UTI is a technology company that develops, acquires, and licenses software applications.[19] At this time, those applications include: the Uber App (offered by UTI's subsidiaries, Rasier-CA and Uber USA, to independent providers of transportation services), the Uber Eats Food Delivery App (offered by UTI's subsidiary, Portier, LLC, to independent providers of food delivery), and the Uber Freight App (offered by UTI's subsidiary, Uber Freight, to independent providers of freight delivery services). Maguire Decl., ¶ 4. In addition, UTI also licenses its software applications to several unaffiliated companies including Getaround, which independently provides rental car services, and taxi companies that utilize the Uber app. *Id.* ¶ 5.

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[16] *Id.* mimeo at 18 and 23 (FOF No. 9) (emphasis added).

[17] *Assigned Commissioner and Administrative Law Judge's Ruling Ordering Uber Technologies, Inc. to Answer Questions and Produce Documents* (June 3, 2015).

[18] *Response of Uber Technologies, Inc. to Assigned Commissioner and Administrative Law Judge's Ruling* (July 1, 2015); *see also Response of Uber Technologies, Inc. to Administrative Law Judge Robert M. Mason's Ruling Dated September 17, 2015* (September 24, 2015) (detailing the corporate relationship between UTI and its subsidiaries).

[19] *See* Declaration of Thomas Maguire in Support of the Application of UTI, Rasier-CA, Uber USA and UATC for Rehearing of D.18-04-045 ("Maguire Decl."), ¶ 4.

Rasier-CA holds a TNC permit issued by the Commission, as well as a license from UTI to use UTI's intellectual property and the Uber trademark. *Id.* ¶ 10. In turn, Rasier-CA enters into agreements with TNC driver-partners seeking to access the Uber App and online platform.[20] *Id.* ¶ 13. Rasier-CA charges the driver-partner a service fee for use of the Uber App. *Id*. As the holder of a TNC permit and the provider of TNC services, it is Rasier-CA that must comply with the Commission's TNC regulations in all respects, such as by meeting safety requirements, maintaining insurance, and paying fees into the Public Utilities Commission Transportation Reimbursement Account ("PUCTRA fees").

In the same 2015 ruling, the Commission requested similar information from UTI with respect to TCP services. In response, UTI explained that its wholly-owned subsidiary, Uber USA, holds a license for UTI's intellectual property and trademark. *Id.* ¶ 18. In turn, Uber USA licenses the Uber App to TCP permit holders, through which the individual drivers receive trip requests. *Id.* ¶ 19. Like Rasier-CA, Uber USA charges the TCP holders a service fee for use of the Uber App. *Id.* ¶ 26. Because each driver operates pursuant to a CPUC-issued TCP permit, a TCP holder who enters into an agreement with Uber USA is individually responsible for complying with the Commission's TCP regulations, such as paying PUCTRA fees for the TCP services she provides. *Id.* ¶ 27.

In subsequent filings, UTI explained that another subsidiary, UATC, separately holds a TCP permit. Geidt Decl., ¶ 3. UATC owns, develops, and tests autonomous vehicle technology. *Id.* ¶ 4. To prepare for offering transportation services to members of the public using its self-driving vehicles, UATC obtained a TCP permit and is subject to all TCP-related requirements. *Id.* ¶ 8. The TCP services that UATC may provide would be wholly distinct from the TCP

[20] As set forth in the 2013 TNC Decision, individual TNC drivers are not required to hold a TNC permit. 2013 TNC Decision, mimeo at 2.

services provided by the TCP permit holders who enter agreements with Uber USA. *Id.* ¶ 9.

Overall, as UTI has previously explained to the Commission, the Uber corporate structure is intended to keep separate its distinct lines of business. Uber's corporate structure is depicted in the following diagram already in the record of this proceeding:

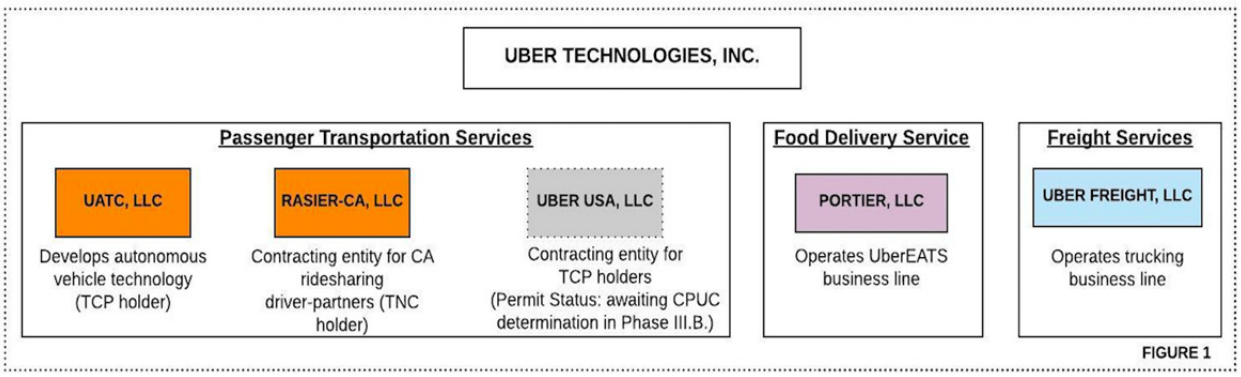

FIGURE 1

D. The Commission's Decision Departs from its Prior Findings.

On May 4, 2018, the Commission issued the present Decision, which directly contradicts its prior findings of fact that UTI is not a TNC, and concludes that UTI also meets the definition of a TCP. According to the Commission, UTI is a TNC within the plain meaning of the statute and, even if it is not, it controls the operations of Rasier-CA's TNC operations to such a degree that UTI is an "alter ego" of Rasier-CA, rendering UTI subject to the TNC regulatory requirements. The Commission reached the same conclusions in classifying UTI as a TCP, except it relied on the operations of Uber USA and UATC to apply the alter ego doctrine.

III. STANDARD OF REVIEW

Commission Rule 16.1(c) states that the purpose of an application for rehearing is to alert the Commission to legal errors so the Commission may correct its errors expeditiously.[21] A party may apply for rehearing setting forth the grounds on which the applicant considers the

[21] *See* Rule 16.1(c).

Commission's order or decision to be unlawful or erroneous.[22] The Commission may then grant rehearing on those matters if "sufficient reason is made to appear."[23]

Pursuant to Public Utilities Code section 1757.1, a decision by the Commission may be set aside on review when, among other things: (1) the decision was an abuse of discretion; (2) the Commission did not proceed in the manner required by law; (3) the Commission acted without, or in excess of, its powers or jurisdiction; (4) the decision is not supported by the findings; (5) the decision constitutes an abuse of discretion; and/or (6) the decision violates a party's constitutional rights.[24] In addition, findings by the Commission must be supported by substantial evidence.[25]

IV. ASSIGNMENTS OF ERROR

The following findings of fact and conclusions of law (1) are outside or in excess of the Commission's powers or jurisdiction; (2) resulted from the Commission not proceeding in the manner required by law; (3) resulted in a decision that is not supported by the findings; (4) are not supported by substantial evidence; (5) constitute an abuse of discretion; and/or (6) violate UTI's constitutional rights: Findings of Fact Nos. 9, 11-14, and 18; and Conclusions of Law Nos. 1, 2, 3, 4, 5, 6, and 7. In addition, the Decision's Ordering Paragraphs are not supported by any of the Findings of Fact or Conclusions of Law.

Specifically, the Commission issued and relied upon findings of fact and conclusions of law that are incorrect and/or lack support in the record as follows:

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[22] *See* Rule 16.2; *see also* Pub. Util. Code § 1732.

[23] Pub. Util. Code § 1731(b)(1).

[24] *See e.g.*, *S. Cal Edison Co. v. Pub. Util. Comm'n*, 140 Cal. App. 4th 1085, 1096 (2006).

[25] *See* Pub. Util. Code § 1757(a)(4)); *Cal. Mfrs Ass'n v. Pub. Util. Comm'n*, 24 Cal. 3d 251 (1979) (The Court annulled a Commission decision on the grounds that "neither finding nor evidence exists" supporting the Commission's conclusion that an adopted rate design would conserve more natural gas than any other proposed rate design.).

- Finding of Fact No. 9: "Uber sets the fares it charges riders unilaterally."[26] This finding is inaccurate because TCP drivers to whom Uber USA has licensed the Uber App have authority to adjust fares.[27]
- Finding of Fact No. 11: "Uber claims a proprietary interest in its riders, and prohibits its drivers from answering rider queries about booking future rides outside the Uber app, or otherwise soliciting rides from Uber riders."[28] This finding is inaccurate because it is the Commission, not UTI or any of the Uber entities, that prohibits TNC drivers from operating outside the purview of the Uber App by booking future rides or accepting "street hails."[29] The Commission reinforces this prohibition by requiring that Rasier-CA and other TNCs train drivers against soliciting trips through channels separate from the applicable online platform.[30]
- Findings of Fact Nos. 12-14: "Uber exercises control over the qualification and selection of its drivers,"[31] "Uber terminates the accounts of drivers who do not

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[26] Decision, mimeo at 35 (FOF No. 9).

[27] UTI explained this authority in its December 11, 2015 submission containing answers to questions and follow-up questions from the Commission. *See Response of Uber Technologies, Inc. to Assigned Commissioner and Administrative Law Judge's Ruling*, at 4 (Dec. 11, 2015) ("TCP Holder Drivers on behalf of TCP Holders have full discretion to charge the rider a fare that is less than the recommended fare.").

[28] Decision, mimeo at 35 (FOF No. 11).

[29] 2013 TNC Decision, mimeo at 30 ("TNC drivers may only transport passengers on a prearranged basis. For the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences. TNC drivers are strictly prohibited from accepting street hails.").

[30] D.16-04-041, *Decision on Phase II Issues and Reserving Additional Issues for Resolution in Phase III*, mimeo at 25-26 (requiring "that each TNC train its drivers" about the prohibition against "soliciting business separate from app-based arrangements").

[31] Decision, mimeo at 35 (FOF No. 12).

perform up to Uber standards,"[32] and "Uber deactivates accounts of passengers for low ratings or inappropriate Conduct."[33] These findings are inaccurate because it is Raiser-CA and Uber USA, via intercompany agreements with UTI, which exercise control over such issues.

- Finding of Fact No.18: "Rasier, LLC is the direct wholly-owned subsidiary of Uber USA, LLC (Uber USA)."[34] This finding is inaccurate because Rasier, LLC is not a direct wholly-owned subsidiary of Uber USA. Rasier, LLC is a direct wholly-owned subsidiary of UTI.[35]
- Conclusion of Law No. 6: "It is reasonable to conclude that UATC should be considered a mere instrumentality of Uber." This conclusion is based on an incomplete and incorrect evidentiary record. As the Commission admits in the Decision, the Commission based this finding on the limited information UATC was required to provide in connection with UATC's TCP permit application. More importantly, the Commission failed to include or address the further information that UATC provided in its comments on the proposed decision (*e.g.*, that UATC has its own employees, vehicles, and real estate that are separate and apart from UTI).

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[32] *Id.* (FOF No. 13).

[33] *Id.* (FOF No. 14).

[34] *Id.* at 36 (FOF No. 18).

[35] UTI previously informed the Commission of a proposed restructuring whereby Rasier, LLC would become a subsidiary owned by Uber USA, but this restructuring did not occur. *See* Appendix A to *Response of Uber Technologies, Inc. to Administrative Law Judge Robert M. Mason III's Ruling Dated September 17, 2015* (Sept. 24, 2015).

V. ARGUMENT

A. By Finding that UTI is a TNC, the Commission Exceeded its Jurisdiction, Failed to Proceed in the Manner Required by Law, Reached a Decision Unsupported by the Findings, and Abused its Discretion.

The Commission should rehear its decision finding that UTI is a TNC for at least four reasons:

First, the Commission failed to proceed in the manner required by law and abused its discretion by misreading the plain language meaning of the phrase "provide" transportation services to interpret Public Utilities Code § 5431(c). Second, the Commission reached a decision unsupported by the findings because it already regulates UTI's subsidiary, Rasier-CA, as a TNC, and the record does not support the conclusion that regulating Rasier-CA is insufficient. Third, the Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion by misapplying the legal doctrine of alter-ego liability. The doctrine exists for the limited purpose of holding a corporate entity responsible for the debts or liabilities of a separate subsidiary, not to allow an agency to broaden its regulatory powers, and especially not where the agency already regulates the subsidiary in full. Fourth, to the extent the Commission's Decision purports to require UTI to pay PUCTRA fees back to 2013 that the Commission has already collected from Rasier-CA, the Commission failed to proceed in the manner required by law and abused its discretion because requiring UTI to pay PUCTRA fees already collected would contradict the plain meaning of the PUCTRA fees statute.

1. UTI Does Not Meet the Statutory Definition of a TNC as Set Forth in Public Utilities Code § 5431(c).

The Commission concludes that UTI is a TNC within the plain meaning of that term under Public Utilities Code § 5431(c). That statute defines a TNC as follows:

> "Transportation network company" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.[36]

To ascertain the plain meaning of this statutory language, the Commission cites the Merriam-Webster Online Dictionary ("Merriam-Webster") that defines "provide" as "to supply or make available."[37] Based on this dictionary definition, the Commission argues that UTI is a TNC because it supplies or makes available TNC services.

The Commission misreads the dictionary definition of "provide" to interpret Public Utilities Code § 5431(c), and in so doing, fails to proceed in the manner required by law and abuses its discretion. In defining "provide," Merriam-Webster uses the following illustrative example: "*provided* new uniforms for the band."[38] Similarly, while Merriam-Webster defines "supply" as meaning "to make available for use," it gives the following example: "*supplied* the necessary funds."[39] In both illustrations, the subject of the verb directly furnishes the object, *i.e.*, by providing uniforms or supplying funds. Yet, the Commission disregards these critical components of the Merriam-Webster definition.

Where, as here, the language of a statute is unambiguous, the statute must be applied in accordance with the plain meaning of that language.[40] Thus, as applied to Public Utilities Code § 5431(c), the Commission's own dictionary examples of "provide" and "supply" mean that a

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[36] Pub. Util. Code, § 5431(c).

[37] Decision, mimeo at 15 (quoting Merriam-Webster Online Dictionary).

[38] *Provide*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/provide (last visited May 8, 2018) (emphasis in original).

[39] *Supply*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/supply (last visited May 8, 2018) (emphasis in original).

[40] *Lewis v. Super. Ct.*, 19 Cal.4th 1232, 1245 (1999).

company is not a TNC unless it ***directly*** provides transportation services. UTI does not meet this definition. UTI does not employ or contract with driver-partners to transport passengers or otherwise provide transportation services; rather, it develops software and then licenses that software to Rasier-CA, which separately operates as a TNC. UTI also does not contract with riders utilizing the Uber app.

Even the Commission acknowledges that UTI plays an indirect role in the transportation of passengers. The Commission characterizes UTI as a "lynchpin" and a "catalyst" that is "continuous[ly] involved[]" in the provision of transportation services.[41] But developing and licensing a technology tool to an existing industry differs from providing the services furnished by that industry. Indeed, if driver-partners were to stop contracting with Rasier-CA, TNC services would stop, even though the Uber App that UTI licenses to Rasier-CA would still exist.

The fact that the Uber App is available for both TNC and TCP services is another reason UTI is not itself a TNC and it is in the business of licensing the Uber App for various transportation providers to use. Similarly, while UTI does not license the Uber App to any other TNC in California other than Rasier-CA, the Commission itself recognizes that like other software companies, UTI could choose to license the Uber App to other unaffiliated TNCs if UTI chose to do so.[42]

Taking the Commission's Decision to its logical conclusion, if Berkshire Hathaway (which is a holding company) owned a company that developed a ridesharing app and licensed it to another entity through which drivers would then contract to provide the transportation services—*i.e.*, the same set up as UTI and Rasier-CA—Berkshire Hathaway would suddenly become a regulated TNC itself. Such an outcome contradicts both the plain meaning and a

[41] Decision, mimeo at 15-16.

[42] *See* Decision, mimeo at 23-24.

common sense reading of the statutory definition of a TNC.

Further, the Commission's interpretation of Public Utilities Code § 5431(c) contravenes well-settled California law. "Our Supreme Court has defined 'transportation' as 'the taking up of persons or property at some point and putting them down at another.'"[43] In so holding, the Court refused to defer to the Commission's attempt to use a broad interpretation of the term "transportation" to expand its regulatory reach.[44] The same rule applies here: the Commission exceeds its authority and abuses its discretion by attempting to define "transportation" as reaching a company that licenses software to a third party, but that does not itself "tak[e] up … persons or property at some point and put[] them down at another," or even contract directly with those who do.

Put simply, UTI does not itself transport anyone or contract with the independent driver-partners who do so, and so it does not engage in "transportation" under California law. Accordingly, UTI does not meet the statutory definition of a TNC under Public Utilities Code § 5431(c).

2. The Commission Already Regulates Rasier-CA as a TNC and There Is No Record that Regulating Rasier-CA Is Insufficient.

The Commission fails to proceed in the manner required by law and abuses its discretion by seeking to regulate UTI as a TNC. The Commission already regulates Rasier-CA as a TNC, cites no evidence why it is necessary to regulate both UTI and Rasier-CA under the same TNC regulations, and fails to explain why such regulation would not be duplicative. Indeed, the Commission has previously agreed that regulating both Rasier-CA and UTI would be

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[43] *City of St. Helena v. Pub. Util. Comm'n*, 119 Cal. App. 4th 793, 802, *as modified on denial of reh'g* (July 21, 2004), *disapproved of on other grounds by Gomez v. Super. Ct.,* 35 Cal.4th 1125 (2005) (quoting *Golden Gate Scenic S. S. Lines, Inc. v. Pub. Util. Comm'n,* 57 Cal.2d 373, 380 (1962)).

[44] *Id.* at 803.

unnecessary and duplicative: in the 2013 TNC Decision, it was "persuaded by Uber's comments" that regulating a parent entity and subsidiary for the same insurance requirements was unnecessary.[45]

As the Commission notes in the instant Decision, Rasier-CA applied for a TNC permit in January 2014; the Commission granted its application by awarding TNC Permit No. TCP0032512-P in April 2014.[46] Rasier-CA is the only California TNC permit holder that provides transportation services through the Uber App.[47] Since properly registering as a TNC, Rasier-CA is the entity that must adhere to all TNC regulations, including paying all applicable PUCTRA fees, maintaining sufficient insurance, and implementing certain safety requirements.

In instances where modifying the Uber App is necessary for Rasier-CA to remain in compliance with TNC regulations, UTI has readily cooperated by implementing those modifications so Rasier-CA can satisfy its regulatory requirements. Maguire Decl., ¶ 14. Given that the Commission already regulates Rasier-CA as a TNC, and the lack of any evidence suggesting that regulatory reach is insufficient, the Commission fails to proceed in the manner required by law and abuses its discretion by superfluously regulating UTI for the same TNC services provided by Rasier-CA.

3. The Commission Misapplies the Legal Doctrine of Alter-Ego Liability as an Improper Means of Expanding Its Regulatory Powers.

As tacit acknowledgement that UTI does not fit within the statutory definition of a TNC,

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[45] 2013 TNC Decision, mimeo at 10.

[46] Decision, mimeo at 6-7.

[47] The Decision incorrectly implies that there are entities other than Rasier-CA to which UTI licenses the Uber App for purposes of providing TNC services in California. *See* Decision at 23-24. There are no such unaffiliated TNCs—the only TNC entity to whom UTI currently licenses the Uber App in California is Rasier-CA. Maguire Decl., ¶ 11. Since there have been no unaffiliated TNCs, there cannot be any unpaid PUCTRA fees for such non-existent unaffiliated TNCs. All PUCTRA fees owed based on trips provided by Rasier-CA have been paid by Rasier-CA, the actual TNC.

the Commission relies upon the legal doctrine of alter-ego liability as an alternative basis for defining and regulating UTI as a TNC. According to the Commission, UTI controls Rasier-CA's provision of TNC services to such a degree that UTI, in a legal sense, actually *performs* those services as Rasier-CA's alter ego and can thus be regulated as a TNC. The Commission's theory distorts and misapplies the alter-ego doctrine.

"Alter ego is an extreme remedy, sparingly used."[48] "It is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation . . . is not liable for the acts of its subsidiaries."[49] "A parent corporation may be deemed the 'alter ego' of its subsidiary corporation only if [1] there is 'such unity of interest and ownership that the separate personalities of the subsidiary and the parent no longer exist' [2] and it appears that 'if the acts are treated as those of the subsidiary alone, an inequitable result will follow."[50] Applying this doctrine "is the rare exception, applied in the case of fraud or certain other exceptional circumstances."[51] The "heavy burden" of establishing its application "rests on the shoulders of the party seeking to pierce the corporate veil."[52]

By contrast, the alter-ego doctrine is not and never has been a means for regulating a corporate entity based on its relationship to a subsidiary where the subsidiary is already subject to and complying with the same set of regulations. Even the Commission agrees the alter-ego doctrine has not previously been used in this way: the Commission acknowledges that "this

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[48] *Sonora Diamond Corp. v. Super. Ct.,* 83 Cal. App. 4th 523, 539 (2000).

[49] *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (quoting Douglas & Shanks, INSULATION FROM LIABILITY THROUGH SUBSIDIARY CORPORATIONS, 39 Yale L.J. 193 (1929).)

[50] *Doney v. TRW, Inc.,* 33 Cal. App. 4th 245, 249 (1995) (quoting *Mesler v. Bragg Mgmt. Co.*, 39 Cal.3d 290, 301(1985)) (brackets omitted).

[51] *Katzir's Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir. 2004) (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003)).

[52] *Santa Clarita Org. for Planning & the Env't v. Castaic Lake Water Agency,*1 Cal. App. 5th 1084, 1105, *as modified on denial of reh'g* (Aug. 16, 2016).

body of law focuses on the question of which corporate entity should bear the ultimate legal liability for the actions committed."[53] In other words, the Commission acknowledges that the alter-ego doctrine is concerned with the question of whether a corporate entity is ***liable*** for a particular action to prevent an ***injustice***.

As the following discussion demonstrates, the Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion by applying the alter-ego doctrine because neither element of the standard can be established: (1) the unity of interest between UTI and Rasier-CA is not so pervasive to warrant disregarding their separate corporate personalities; and (2) no inequitable result would occur by treating the actions of Rasier-CA as its own.

a. There Is Not a Complete and Pervasive "Unity of Interest" Between Rasier-CA and UTI.

UTI and Rasier-CA share no unity of interest and ownership so pervasive as to destroy their separate corporate personalities. The Commission concludes that Rasier-CA is a mere instrumentality of UTI, but this conclusion is unsupported by the record and the Commission arbitrarily ignores evidence that Rasier-CA and UTI operate as distinct legal entities.

Rasier-CA is a lawful Delaware-organized limited liability company operating in compliance with Delaware law. Maguire Decl., ¶ 7. As the entity that contracts with driver-partners operating personal vehicles in California, Rasier-CA is also independently qualified to do business in the State of California. *Id.* In compliance with Delaware and California law, Rasier-CA has two appointed managers, who are separate and distinct from UTI's directors and board. *Id.* ¶ 8. [54] Rasier-CA is subject to a legally valid and appropriate intercompany

[53] Decision, mimeo at 15.

[54] *See* Delaware Limited Liability Company Act, 6 Del. C. § 18-402.

agreement that establishes a service fee for UTI to provide shared services to Rasier-CA. *Id.* ¶ 9.

The fact that Rasier-CA shares services with employees of UTI or uses the same outside counsel as UTI is not controlling. As the Commission acknowledged in its Decision, a multitude of factors can be considered in determining whether the alter-ego doctrine applies, but "[n]o one characteristic is dispositive" and the controlling inquiry depends on "all [of] the circumstances[.]"[55] Parent companies often provide resources to subsidiaries without triggering alter-ego liability: "The parent is not 'exposed to liability for the obligations of the subsidiary when the parent contributes funds to the subsidiary for the purpose of assisting the subsidiary in meeting its financial obligations and not for the purpose of perpetrating a fraud.'"[56]

Rasier-CA is an independent party to numerous legally enforceable contracts, including approximately fifteen airport operating agreements to date and registration with the DMV's EPN program. *Id.* ¶ 15. Rasier-CA and UTI are separate legal entities and operate in accordance with this separate status. As such, the Commission cannot establish the first element of the alter-ego standard.

b. No Inequitable Result Would Occur in the Absence of Doubly Regulating Rasier-CA and UTI as TNCs.

Even if there were a sufficient unity of interest to meet the first element, the analysis required by the second element of alter-ego doctrine provides an even clearer picture of why UTI cannot be regulated as Rasier-CA's alter ego: the record lacks any support for the Commission's conclusion that an inequitable result will occur unless UTI and Rasier-CA are both regulated as TNCs. To the contrary, such duplicative regulation would itself constitute an injustice by unfairly penalizing UTI for its subsidiary's ***compliance*** with TNC regulations and by arbitrarily

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[55] Decision, mimeo at 14.

[56] *Sonora Diamond Corp. v. Super. Ct.,* 83 Cal. App. 4th 523, 539 (2000) (quoting *Lowell Staats Min. Co., Inc. v. Pioneer Uravan, Inc.,* 878 F.2d 1259, 1263 (10th Cir. 1989)) (brackets omitted).

using the alter-ego doctrine to doubly regulate UTI and Rasier-CA when the Commission has not applied this rationale to analogous parent-subsidiary contexts.

Critically, ***bad faith*** is a prerequisite to establishing the second element: "[b]ad faith in one form or another must be shown before the court may disregard the fiction of separate corporate existence."[57] That is because the alter ego doctrine exists to avoid *injustice* or *unfairness* by ensuring that *liability* attaches to a wrongdoer: "Alter ego is essentially a theory of *vicarious* liability under which the owners of a corporation may be held liable for harm for which the corporation is responsible where, because of the corporation's utilization of the corporate form, the party harmed will not be adequately compensated for its damages."[58] "The critical question is 'whether in the particular case presented and for the purposes of such case justice and equity can best be accomplished and fraud and unfairness defeated by a disregard of the distinct entity of the corporate form.'"[59] Indeed, the "chief illustrations of disregarding the corporate entity involve using the corporate form to evade individual liability to third parties."[60]

Here, treating UTI and Rasier-CA as distinct legal entities will not lead to an inequitable result because Rasier-CA has ***already paid*** the very same PUCTRA fees the Commission claims to have lost as a consequence of UTI's corporate structure. The Commission cites no evidence

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[57] *Westinghouse Electric Corp. v. Super. Ct.,*17 Cal.3d 259, 274 (1976) (quoting *Luis v. Orcutt Town Water Co.,* 204 Cal.App.2d 433, 443-444 (1962)).

[58] *Doney*, 33 Cal. App. 4th at 249 (emphasis in original).

[59] *Id.* (quoting *Mesler*, 39 Cal.3d at 301).

[60] 9 Witkin, Summary of Cal. Law 11th Corp. § 15 (2018). As the Court of Appeals has noted:

> In almost every instance where a plaintiff has attempted to invoke the doctrine he is an unsatisfied creditor. The purpose of the doctrine is not to protect every unsatisfied creditor, but rather to afford him protection, where some conduct amounting to bad faith makes it inequitable, under the applicable rule above cited, for the equitable owner of a corporation to hide behind its corporate veil.

Associated Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d 825, 842 (1962).

of unpaid fees. Instead, the Commission suggests there might be unpaid PUCTRA fees from unaffiliated TNCs that may be licensing UTI's software.[61] There are no such unaffiliated TNCs—the only TNC entity to whom UTI currently licenses the Uber App in California is Rasier-CA. Maguire Decl., ¶ 11. Since there have been no unaffiliated TNCs, there cannot be any unpaid PUCTRA fees for such non-existent unaffiliated TNCs. All PUCTRA fees owed based on trips provided by Rasier-CA have been paid by Rasier-CA, the actual TNC. Further, if any unaffiliated TNCs had licensed and used the Uber App in California, the CPUC would have permitted the entities as TNCs and these unaffiliated TNCs would be obligated to pay the required PUCTRA fees owed based on trips they provided. As such, the Commission cannot rely on the deprivation of regulatory fees to show that applying the alter-ego doctrine is necessary to avoid an inequitable result or injustice.

Aside from PUCTRA fees, the Commission appears to believe that an inequitable result is discernible from the complicated manner UTI entities are organized. But for a multi-billion dollar business involved in licensing software to distinct entities that contract with other partners to provide a variety of services (transportation, meal delivery, shipping, autonomous vehicles, and other enterprises), the UTI corporate structure makes sense. For instance, UTI's subsidiary, Portier, LLC, offers the Uber Eats platform for food delivery services, whereas Uber Freight, LLC, operates technology for freight delivery. Maguire Decl., ¶ 4. In turn, both of these entities differ from Rasier-CA, which offers the Uber App for transportation network services. *Id*. These various services are subject to different regulations enforced by different agencies, and it is commonplace for multiple subsidiaries of the same corporate parent to be involved in different lines of business. Under these circumstances, it makes sense that UTI would license its

[61] *See* Decision, mimeo at 22-23.

technology to subsidiaries that themselves are subject to the varying regulations applicable to each service each subsidiary provides.

The only inequitable result discernible from these proceedings is the Commission's decision to subject Rasier-CA and UTI to duplicative regulations. Such a result is inconsistent with the purpose of alter-ego doctrine: "The essence of the alter-ego doctrine is that . . . ***the corporate veil will not be pierced where to do so would create an injustice***."[62]

None of the Commission's alter-ego decisions support extending the doctrine to instances where a parent and subsidiary would be subject to duplicative regulation that would cause, rather than prevent, injustice. For instance, in *Toho-Towa Co., Ltd.*, the issue was a dispute over *which entity* was "liable for failure to pay plaintiff on a movie distribution deal," to ensure that plaintiff was remedied—not to allow for duplicative recovery from both entities.[63] The same is true of *Hub City Solid Waste Services, Inc.*, which the Commission describes as involving a dispute over who was "liable for [a] breach of the contract with the City [of Compton]"—another instance where alter-ego liability was necessary to prevent an injustice, not to trigger duplicative recovery.[64] In both *Toho-Towa* and *Hub City*, an aggrieved plaintiff sought to recover damages for a breach of contract, only to discover that the other party to that contract had been deliberately undercapitalized. Here, by contrast, there is no evidence that Rasier-CA has been undercapitalized or that it has underpaid PUCTRA fees—to the contrary, those fees have been paid and there is no rational basis why UTI should be doubly regulated or pay duplicative fees.

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[62] 15 Cal. Jur. 3d CORPORATIONS § 24 (emphasis added).

[63] Decision, mimeo at 19 (citing and discussing *Toho-Towa Co. v. Morgan Creek Productions, Inc.,* 217 Cal. App. 4th 1096 (2013)).

[64] *Id.* at 19 (citing and discussing *Hub City Solid Waste Services, Inc.* v. City of Compton, 186 Cal. App. 4th 1114 (2010)).

Rollins Burdick Hunter, too, is inapposite.[65] In that decision, the Court of Appeals invoked the alter-ego doctrine to hold that an out-of-state corporation named as a defendant in state court was subject to personal jurisdiction in California because it exercised "pervasive" control over its in-state subsidiary, a co-defendant in the same lawsuit. The *Rollins Burdick Hunter* decision is distinguishable on two grounds. First, it concerns preliminary questions of personal jurisdiction, not whether a corporation ultimately should be held liable to prevent a fraud or injustice perpetrated by its subsidiary. Second, and more significantly, *Rollins Burdick Hunter* presents an incomplete illustration of the alter-ego doctrine because the Court of Appeals failed to address the second element requiring that fraud or injustice result if the corporate form is not disregarded.[66]

A complete illustration of the alter-ego doctrine as applied to jurisdictional issues is *Sheard v. Superior* Court,[67] where the Court of Appeals correctly stated that "two requirements" are necessary before the doctrine can be applied: complete control *and* an inequitable result.[68] Finding these elements unmet, the Court of Appeals quashed the summons for lack of jurisdiction.[69] *Sheard* reinforces the twin requirements of the alter-ego doctrine[70] and demonstrates that the doctrine exists only to prevent injustice, and thus, cannot permit regulating a parent for the actions of its subsidiary where those actions are already regulated and further

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[65] *Id.* at 21 (citing *Rollins Burdick Hunter of So. Cal., Inc. v. Alexander & Alexander Servs., Inc.*, 206 Cal. App. 3d 1 (1988)).

[66] *Rollins Burdick Hunter of So. Cal., Inc.*, 206 Cal. App. 3d at 11.

[67] *Sheard v. Superior* Ct., 40 Cal. App. 3d 207 (1974).

[68] *Id.* at 211-12.

[69] *Id.* at 213.

[70] *See also Associated Vendors, Inc.*, 210 Cal. App. 2d at 837 ("The gist of the cases which have considered the doctrine is that *both* of these requirements must be found to exist before the corporate existence will be disregarded . . . .") (emphasis in original).

regulation would be duplicative.

The decisions the Commission uses to recite general principles of the alter-ego doctrine likewise demonstrate that preventing injustice by ensuring liability is the fundamental purpose of the doctrine:

- In *Las Palmas*, a developer fraudulently used its subsidiary to avoid liability on guarantees to third parties, thereby justifying veil piercing.[71]
- In *Pan Pacific Sash*, plaintiff brought claims to recover debts owed by a corporation and sought to hold a separate corporation equally liable for those debts, and the court held that failing to pierce the corporate veil would "promote injustice."[72]
- In *Associated Vendors*, plaintiff unsuccessfully sought to hold one defendant liable as the alter ego of co-defendants for the purpose of collecting unpaid property rental payments.[73]
- In *Mesler*, plaintiff claimed that the parent corporation of his employer was liable for personal injuries sustained while working a construction job.[74]
- In *Troyk*, the question was whether separate insurance entities were liable under alter-ego principles to pay restitution for violations of unfair competition law.[75]
- In *Say & Say*, the Court of Appeals concluded that an attorney was liable as the alter ego of his corporation because he formed the corporation to protect himself from the consequences of filing vexatious lawsuits and "as a factual matter it would be inequitable to allow the corporate fiction . . . to avoid the effect [of the law].[76]
- In *H.A.S. Loan Service*, the court imposed alter-ego liability where a company had split its operations between two entities as a "subterfuge" to avoid either one from being required to pay a financial corporation tax.[77]

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[71] Decision, mimeo at 13 (citing *Las Palmas Assoc. v. Las Palmas Ctr. Assoc.,* 235 Cal. App. 3d 1220 (1991)).

[72] *Id.* (citing *Pan Pacific Sash & Door Co. v. Greendale Park, Inc.,*166 Cal. App. 2d 652 (1958)).

[73] *Id.*, mimeo at 14 (citing *Assoc. Vendors, Inc.*, 210 Cal. App. 2d 825 (1962)).

[74] *Id.* (citing *Mesler v. Bragg Mgmt Co.,* 39 Cal. 3d 290 (1985)).

[75] *Id.* (citing *Troyk v. Farmers Grp, Inc.,* 171 Cal. App. 4th 1305 (2009)).

[76] *Id.* at 22 (citing *Say & Say Inc. v. Ebershoff* , 20 Cal. App. 4th 1759 (1993)).

[77] *Id.* n.49 (citing *H.A.S. Loan Service v. McColgan,* 21 Cal. 2d 518 (1943)).

- In *McLaughlin*, a union entered into a collective bargaining agreement with a retailer, which then opened a new store nearby under the auspices of a separate entity—the Court of Appeals held the new entity also had to comply with the agreement because the trial court properly found that a contrary outcome "would result in an injustice and unfairness."[78]

In sum, all of the alter-ego decisions the Commission cites concern situations where a company sought to *escape* its legal obligations by manipulating the corporate form. Here, in stark contrast to the Commission's cases, the regulated subsidiary (Rasier-CA) has paid all outstanding regulatory fees (*i.e.*, PUCTRA fees) and must comply with all legal requirements (*i.e.*, TNC regulations). In other words, there is no dispute over whether Rasier-CA is liable for compliance with the TNC regulations, and there is no dispute that Rasier-CA must comply with these regulations. Moreover, UTI has done nothing to undermine the Commission's efforts to regulate Rasier-CA. This is a far cry from the showing of bad faith necessary to pierce the corporate veil.[79] "Bad faith, manifestly, is the complete opposite of good faith."[80] Both Rasier-CA and UTI have acted in good faith.

The injustice of applying the alter-ego doctrine to UTI is further exemplified by the fact that the Commission has not applied this doctrine to other similarly situated parent-subsidiary relationships. The Commission appears to justify its conclusion by attempting to characterize UTI and Rasier-CA's relationship as unconventional, but, in fact, the Commission commonly regulates a subsidiary but not the parent. For instance, many investor-owned electric utilities are subject to regulation by the CPUC as "public utilities" within the broad statutory definition of that term, which encompasses any company that provides a service "where the service is

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[78] *Id.* n.50 (citing *McLaughlin v. L. Bloom Sons Co.,* 206 Cal. App. 2d 848, 85 (1962)).

[79] *See Westinghouse Electric Corp.*, 17 Cal. 3d at 274.

[80] *Rosen v. E. C. Losch, Inc.,* 234 Cal. App. 2d 324, 334-35 (1965).

performed for, or the commodity is delivered to, the public or any portion thereof."[81] Often these regulated utilities are owned by a holding company that the Commission does ***not*** construe or regulate as a public utility.[82] Based on the Decision regarding UTI, however, the Commission *could* now contend these holding companies are involved to such a degree with their subsidiaries that they too provide a "public service" under Public Utilities Code § 216. But the Commission has not used this alter-ego reasoning in other regulated contexts, evidencing the arbitrary and capricious nature of the Decision here.

4. UTI Should Not Be Required to Pay Back Charges for PUCTRA Fees that Rasier-CA Already Paid.

The Commission levies back charges against UTI for any unpaid PUCTRA fees during the three-year period before the Decision was issued. According to the Commission, UTI held itself out as a TNC without a permit throughout this time, in violation of Public Utilities Code § 5387.5.

The Commission fails to proceed in the manner required by law and abuses its discretion by levying back fees against UTI for operating as a TNC because UTI is not holding itself out as a TNC and has not done so at any point in the past, and the Commission has issued multiple findings confirming UTI's understanding that it is not a TNC. Again, UTI is a technology company.[83] And twice previously, the Commission declined to find that UTI is a TNC. For years, UTI has reasonably relied on the Commission's prior findings of fact, and, as a matter of law, UTI is entitled to do so. For the Commission to abruptly retract its prior findings is quintessentially arbitrary and amounts to an abuse of discretion and failure to act in the manner

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[81] Pub. Util. Code § 216.

[82] *See, e.g.*, *PG&E Corp. v. Pub. Util. Comm'n,* 118 Cal. App. 4th 1174, 1197 (2004) ("the PUC concedes that the holding companies are not public utilities").

[83] *See supra* § IV.A.1.

required by law.

The Ninth Circuit has held that "[t]hose regulated by an administrative agency are entitled to know the rules by which the game will be played."[84] This entitlement derives from fundamental principles of due process, which require "that the government provide citizens and other actors with sufficient notice as to what behavior complies with the law."[85] In *United States v. AMC Entertainment, Inc.,* the Ninth Circuit explained it would be unreasonable to expect AMC to have known, as a matter of law, that an ADA regulation was susceptible to only one particular meaning when there was a split among the circuit courts as to that meaning.[86] Not until the point at which AMC received constructive notice of that meaning could AMC be retroactively required to implement it.[87] Courts have applied *AMC Entertainment* to foreclose similar attempts at regulation where the intended target lacked sufficient notice of a particular regulation's meaning.[88]

Here, UTI similarly relied on the Commission's two previous findings of fact that it is not a TNC. UTI also relied on the Commission's scoping ruling for this phase of the proceeding, which, as explained below in Section V.C., did not identify payment of PUCTRA back fees as an issue the Commission was considering in this proceeding. For the Commission to abruptly change course, fault UTI for having relied on its prior findings, and penalize UTI by levying

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[84] *U.S. v. AMC Entertainment, Inc.,* 549 F.3d 760, 768 (9th Cir. 2008) (quoting *Alaska Prof. Hunters Ass'n v. Fed. Aviation Admin.*, 177 F.3d 1030, 1035 (D.C. Cir.1999)).

[85] *Id.*

[86] *See id.*

[87] *See id.*

[88] *See, e.g.*, *Robles v. Domino's Pizza LLC*, 2017 WL 1330216, at *5 (2017) (finding *AMC* "to be squarely on point" where plaintiff sought to impose meaning of regulation that would violate defendant's right to due process); *Wilson v. Frito-Lay North America, Inc.* , 961 F. Supp. 2d 1134, 1147 (2013) ("To insist that Defendant should have been complying with a regulation that was not explicitly clarified until November 19, 2012 would buck due process and Ninth Circuit precedent. The Court declines to do either.**"**).

PUCTRA back fee is an abuse of discretion, a failure to act in accordance with the law, and a decision unsupported by the findings.

More importantly, Rasier-CA has already paid the PUCTRA fees due for the prior three years. Maguire Decl., ¶ 15. It would be unlawful for the Commission to reassess those same fees against UTI. PUCTRA fees are set annually and exist to generate enough revenue to fund the regulation of common carriers and other related businesses.[89] When setting PUCTRA fees, the Commission must ensure that "[e]ach class of carrier . . . shall pay fees ***sufficient*** to support the commission's regulatory activities for the class from which the fee is collected and to establish an appropriate reserve."[90] Given that the PUCTRA fees charged to Rasier-CA and other TNCs should be set at a rate deemed to be "sufficient" for the Commission to fund its regulatory activities, requiring UTI to again pay those same fees for the exact same trips would result in a windfall to the Commission. Thus, to the extent the Decision purports to assess against UTI all PUCTRA fees already paid by Rasier-CA in the three preceding years, the Commission exceeds its authority, fails to follow the law, and abuses its discretion.

Assessing duplicative back charges is not only inconsistent with the Public Utilities Code, it is also fundamentally unfair and tantamount to double taxation.[91] The Commission identifies no reason why it is necessary or warranted to assess PUCTRA fees that have already been paid. Instead, it appears any attempt to assess duplicative back PUCTRA fees is merely punitive. But no provision in the Public Utilities Code authorizes the Commission to collect PUCTRA fees solely as a punitive measure.

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[89] *See* Pub. Util. Code § 421.

[90] *Id.* § 422(a)(2) (emphasis added).

[91] *Cf. Flynn v. City & Cnty. of San Francisco*, 18 Cal. 2d 210, 215 (1941) (discussing California Constitution's prohibition on double taxation of property).

The Commission should grant rehearing on this PUCTRA fees issue, and it should also grant rehearing on the above issues related to its misclassification of UTI as a TNC.

B. By Finding that UTI is a TCP, the Commission Exceeded its Jurisdiction, Failed to Proceed in the Manner Required by Law, Reached a Decision Unsupported by the Findings, and Abused its Discretion.

The Commission exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, and abused its discretion in finding that UTI is a TCP and owes back PUCTRA fees, for at least four reasons:

First, the Commission failed to proceed in the manner required by law and abused its discretion by misinterpreting the plain language meaning of the phrase to be "engaged in" transportation services under the statutory definition of a TCP. Second, the Commission reached a decision unsupported by the findings because it already regulates the TCP holders to whom Uber USA licenses the Uber App, and there is no record that such regulation is insufficient. Third, the Commission misapplies the alter-ego doctrine for the same reasons noted above in Section V.A.3. Fourth, the Commission failed to proceed in the manner required by law and abused its discretion by ordering UTI to pay PUCTRA back fees because the Commission should have already collected those fees from the TCP permit holders. Requiring UTI to now also pay those same fees, or, alternatively, penalizing it for any TCP's failure to pay PUCTRA fees, contradicts the plain meaning of the PUCTRA fees statute, and is fundamentally unfair.

1. UTI Does Not Meet the Statutory Definition of a TCP as Set Forth in Public Utilities Code § 5360.

By statute, a TCP is defined to include "every person engaged in transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any

public highway in this state."[92] Yet UTI is not "engaged in" the transportation of persons by vehicle for compensation; it does not provide or arrange, directly or indirectly, transportation services. Rather, UTI is engaged in developing and licensing intellectual property.

The Commission fails to proceed in the manner required by law and abuses its discretion by relying on the wrong dictionary entry to define the phrase, "engaged in," to mean "involved in." Specifically, the Commission argues that Merriam-Webster defines "engaged in" as "involved in [an] activity."[93] This entry, however, does not apply to the statutory language in dispute. The Commission cites the *adjectival form* of the word, "engaged," not the phrasal or intransitive *verb form* used in Public Utilities Code § 5360 ("every person engaged in transportation of persons"). Merriam-Webster defines the adjective, "engaged," to mean "involved in activity : occupied, busy."[94] Surely, the Legislature did not intend to define a TCP as a person or company that is "busy" with providing transportation services. By contrast, Merriam-Webster defines the phrasal verb form of "engaged in" as meaning "to do (something)."[95] Similarly, Merriam-Webster defines the intransitive verb form of "engage" when used with the preposition "in" as meaning (1) "to begin and carry on an enterprise or activity—used with *in* • *engaged* in trade for many years" or (2) "to do or take part in something—used with *in* • *engage* in healthy activities • *engage* in bad conduct."[96]

Applying the correct dictionary entries to define the phrase "engaged in" leads to only

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[92] Pub. Util. Code § 5360.

[93] Decision, mimeo at 24 (quoting Merriam-Webster Online Dictionary) (brackets in original).

[94] *Engaged*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/engaged (last visited May 7, 2018).

[95] *Engaged in*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/engage%20in (last visited May 7, 2018).

[96] *Engage*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/engage (last visited May 7, 2018) (emphasis in original).

one reasonable statutory construction of Public Utilities Code § 5360: a TCP is a person or company that directly provides transportation services, not a third-party company that is involved in those services by virtue of its dealings with the TCP. As noted, UTI does not provide transportation services; it licenses technology to a separate TCP, Uber USA, which itself carries out those services. That UTI's "Uber" brand is associated with transportation services is of no consequence because that brand is part of the package of intellectual property that UTI has developed and licensed, through its subsidiaries, to independent transportation providers. Because UTI does not engage in transportation services, UTI does not meet the definition of a TCP under the plain meaning of Public Utilities Code § 5360.

If the rule were otherwise and the Commission's broad interpretation of "engaged in" were to prevail, a vast range of companies that do not provide transportation services could be considered TCPs. Automakers that lease their cars to TCP drivers, online mapping services that enable TCP drivers to navigate to their passengers' destinations, and mobile device companies whose products TCP drivers use to connect with their customers are all "involved in" transportation services—yet the Commission does not purport to regulate any such entities as TCPs. The Commission's attempt to expand the definition of TCP to UTI, which, like these other examples, is merely indirectly involved in transportation services, is an unlawful extension and application of the law, and the Commission should reconsider it.

2. Uber USA Is the Appropriate UTI Entity to Regulate as a TCP and There Is No Record that Regulating Uber USA Would Be Insufficient.

UTI and Uber USA have previously advised the Commission that the most appropriate entity to regulate as a TCP would be Uber USA.[97] Uber USA is the entity that licenses the Uber

[97] *Opening Comments of Uber Technologies, Inc., Rasier-CA, LLC, Uber USA, LLC, and UATC, LLC on Proposed Decision on Phase III.B. Tracks II and IV Issues*, at 6 (April 9, 2018) ("Uber USA is prepared

App and directly contracts with TCP permit holders who engage in transportation services. Maguire Decl., ¶¶ 17-18.

As an initial matter, it is unnecessary to regulate *any* UTI-related entity as a TCP. The individual drivers who use the Uber App to provide transportation services are already operating pursuant to CPUC-issued TCP permits and are required to pay all necessary PUCTRA fees associated with that status.

The Commission's decision to regulate UTI as a TCP is unsupported by the findings because, if the Commission insists upon regulating a UTI-related entity as a TCP, there is no evidence that regulating Uber USA, instead of UTI, would be insufficient. Uber USA is in the best situation to ensure compliance with TCP regulations. For instance, Uber USA has acknowledged that it may be efficient for it to collect and remit payment for all PUCTRA fees on behalf of the individual TCPs for trips occurring on the Uber app. *Id.* ¶ 27. Uber USA would not and could not collect and remit PUCTRA fees for any trips occurring off the Uber app (for example, if a TCP holder was chartered directly by a rider to provide transportation services).

With respect to UATC, that UTI subsidiary engages in an entirely different line of business focused on developing autonomous vehicles and self-driving technology for passenger and freight vehicles. Geidt Decl. ¶ 4. UATC does not license the Uber App to independent drivers. *Id.* ¶ 15. Instead, it plans to itself engage in transportation services to riders in the future with its own autonomous vehicles as a TCP. *Id.* ¶ 8.

3. The Commission Abused its Discretion and Made a Decision Unsupported by the Findings by Relying Upon the Alter-Ego Doctrine to Regulate UTI as a TCP.

For the same reasons discussed in § V.A.3, the Commission misapplies the alter-ego

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to assume that role if the Commission provides specific directive under its rules and requirements that Uber USA collect and remit TCP-related PUCTRA fees from TCP license holders that use the Uber App on a going-forward basis.").

doctrine as an alternative basis for defining UTI as a TCP. UTI cannot be considered Uber USA's or UATC's alter ego because they are distinct legal entities and no inequitable result would occur from treating them as such. Under the alter-ego standard: (1) neither the relationship between UTI and Uber USA nor the relationship between UTI and UATC involves a unity of interest and ownership so pervasive as to destroy their separate corporate personalities, and (2) setting aside the corporate forms is not necessary to prevent an inequitable result.[98] The Commission's reliance on inapplicable alter-ego case law reveals the weakness of its position that UTI meets the plain language definition of a TCP under Public Utilities Code § 5360.

a. There Is Not a Complete and Pervasive "Unity of Interest" Between UTI and Uber USA.

UTI and Uber USA are legally separate entities that do not share a unity of interest sufficient to meet the first element of the alter-ego standard. Uber USA is in the business of facilitating transportation services between riders and licensed TCP holders. As such, Uber USA separately contracts with these TCP holders to provide them with access to the Uber App. These services are captured in Uber USA's licensing agreements with TCP holders.

Uber USA is a lawful Delaware-organized limited liability company. Maguire Decl., ¶ 17. As the entity that contracts with licensed TCP holders in California, Uber USA is also independently qualified to do business in California. *Id.* In compliance with Delaware and California law, Uber USA has two appointed managers rather than a board of directors. *Id.* ¶ 21.[99] These managers are separate and distinct from UTI's directors and board. *Id.* Uber USA is also governed by a separate operating agreement and maintains separate bank accounts from UTI. *Id.* ¶¶ 22, 24. Uber USA is also subject to a legally valid and appropriate intercompany

[98] *See Doney*, 33 Cal. App. 4th at 249.

[99] *See* Delaware Limited Liability Company Act, 6 Del. C. § 18-402 (Management of a limited liability company).

agreement that establishes a service fee for UTI to provide shared services to Uber USA. *Id.* ¶ 23.

To provide services to individually-licensed TCP holders, Uber USA holds a perpetual and non-exclusive license with UTI to connect riders with the TCP holders who have contracted with Uber USA. *Id.* ¶ 18. Although Uber USA shares employee services with UTI, this fact is not controlling because Uber USA is subject to a valid intercompany agreement with UTI to ensure efficient uses of resources.

UTI is not in the business of contracting to facilitate transportation services between Commission-licensed TCP holders and riders and as such its business is separate and distinct from Uber USA.

b. There Is Not a Complete and Pervasive "Unity of Interest" Between UTI and UATC.

UTI and UATC are also sufficiently independent such that the first element of the alter-ego standard cannot be met. UATC develops self-driving technology and owns self-driving vehicles located in California, Pennsylvania, and Ontario, Canada. Geidt Decl., ¶ 4. UATC received a permit from the California DMV to test autonomous vehicles on March 8, 2017, and continued to hold that permit until it expired on March 31, 2018. *Id.* ¶ 7. UATC obtained a Commission TCP permit in anticipation of offering passenger transportation services to members of the public using vehicles owned and operated by UATC. *Id.* ¶ 8. Any TCP services provided directly to consumers by UATC would be distinct from the services that Uber USA offers via its agreements with TCP holders. *Id.* ¶ 9.

UATC is organized as a Delaware limited liability company. *Id.* ¶ 5. It operates in accordance with the Delaware Limited Liability Company Act, is governed by a separate operating agreement, and is registered with the Secretary of State to operate in California. *Id.*

¶ 6. UATC employs vehicle operators in California, and has an auto liability policy issued by Old Republic Insurance Company that is separate from the auto liability policies that cover Rasier-CA's TNC business. *Id.* ¶ 10. It leases real estate in California and Pennsylvania, among other locations. *Id.* ¶ 11. UATC maintains its own bank accounts, which are separate from those held by UTI. *Id.* ¶ 12. UTI is not a joint account holder with UATC at any bank, savings and loan, or other financial institution. *Id.* ¶ 13.

In sum, UATC is not a mere agent or instrumentality of UTI. Rather, it is a separate legal entity and should be treated as such.

c. No Inequitable Result Will Occur in the Absence of Recognizing that UTI Is a Distinct Legal Entity Separate from Uber USA and UATC.

The Commission's conclusion that an inequitable result will occur by not defining UTI as a TCP is unsupported by the findings. Once again, there is nothing improper or evasive about the corporate structure UTI and its Uber affiliates.[100] And no PUCTRA fees will go unpaid if UTI is not required to register as a TCP. As is true for PUCTRA fees paid by Rasier-CA for TNC services, the fees here sought by the Commission should ***have already been paid*** by the TCP holders who use the Uber App to provide transportation services under licensing agreements with Uber USA. Moreover, Uber USA provided evidence that it is the appropriate entity to be regulated as a TCP, yet the Commission has rejected this proposal without any showing that regulating Uber USA instead of UTI would be sufficient. Lastly, in the event that any actual regulatory avoidance or wrongdoing were to occur at Uber USA or UATC (none has), there is no reason to believe that UTI, as the parent corporation of its Uber affiliates, would not or could not be held liable.

[100] *See supra* § IV.A.4.

4. UTI Should Not Be Required to Pay Back Charges for PUCTRA Fees that TCP Permit Holders Have Already Paid.

For the same reasons that UTI should not be required to pay PUCTRA back fees for its purported status as a TNC, UTI should also not be required to pay PUCTRA back fees for its purported status as a TCP.[101] These same PUCTRA fees should have already been paid by TCP permit holders licensed by Uber USA to use the Uber App, and the Commission cites no evidence to the contrary.

Requiring UTI to pay fees that have already been paid is inconsistent with the purpose collecting PUCTRA fees, which is to levy fees that are "sufficient" for the Commission to sustain its regulatory operations, not to levy fees that result in a financial windfall.[102] Further, demanding and collecting fees on the same transportation services is unfair and akin to double taxation. Accordingly, the Commission should not require UTI to pay back charges for PUCTRA fees, and further, should reconsider its Decision classifying UTI as a TCP.

C. By Ordering that Fines Be Paid by UTI in the Context of a Quasi-Legislative Proceeding, the Commission Exceeded its Jurisdiction, Failed to Proceed in the Manner Required by Law, Reached a Decision Unsupported by the Findings, Made Unsupported Findings, and Abused its Discretion.

The Commission's decision to order UTI to pay PUCTRA back fees as both a TNC and TCP is outside of the scope of this proceeding, a violation of the CPUC's own Rules of Practice and Procedure and the Public Utilities Code, and a violation of UTI's rights to due process under the United States and California Constitutions. By ordering UTI to pay PUCTRA back fees in this manner, the Commission has exceeded its jurisdiction, failed to proceed in the manner required by law, reached a decision unsupported by the findings, made unsupported findings, and abused its discretion.

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[101] *See supra* § IV.A.5.

[102] *See* Pub. Util. Code §§ 421; 422(a)(2).

1. The Scoping Ruling for this Phase of the Proceeding Did Not Include the Potential For Ordering Back Payments/Fines.

The CPUC's Rules of Practice and Procedure define "scoping memo" as an "order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding."[103] The rules require the Commission to issue a preliminary scoping memo in a rulemaking proceeding and provide for objections to the preliminary scoping memo.[104] The assigned CPUC commissioner then must make a ruling on the scoping memo that finally "determines the schedule… and issues to be addressed" in the proceeding.[105] In addition, the Fourteenth Amendment of the U.S. Constitution guarantees "that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses."[106]

On June 12, 2017, the Commission started the phase of this proceeding that culminated in the instant Decision by issuing its *Amended Phase III.B. Scoping Memo and Ruling of Assigned Commissioner* ("Phase III.B Scoping Ruling").[107] Among other items, the Commission stated in the Phase III.B Scoping Ruling it intended to add a new track to the proceeding "to address whether the Commission should reconsider its earlier determination in Decision (D.) 13-09-045 (Finding of Fact 25), that Uber Technologies, Inc. (Uber) is not a TNC [because the Commission] has more information about the extent of Uber's involvement in the TNC

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[103] Rule 1.3(g), Cal. Code Regs., tit. 20, § 5.

[104] Rule 7.1(d), Cal. Code Regs., tit. 20.

[105] Rule 7.3, Cal. Code Regs., tit. 20.

[106] *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 509 (2010) ("Due process 'guarantees' that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses"—including specifically in applying alter-ego liability).

[107] *Amended Phase III.B. Scoping Memo and Ruling of Assigned Commissioner* (June 12, 2017). The Phase III.B Scoping Ruling amended certain portions of the original scoping ruling for this phase of the proceeding which the Commission had originally issued on April 7, 2017. *See Phase III.B. Scoping Memo and Ruling of Assigned Commissioner* (Apr. 7, 2017).

operations than what was known at the time that D.13-09-045 was issued."[108]

The Phase III.B Scoping Memo makes no mention of PUCTRA fees or the potential that UTI could be assessed PUCTRA back fees. In fact, while the Phase III.B Scoping Memo includes a long list of questions and topics to be considered in connection with Uber's regulatory status,[109] there is no discussion of PUCTRA fees or UTI or its subsidiaries' responsibility for paying such fees. The Commission's issuance of the Proposed Decision was UTI's first notice of the possibility of PUCTRA back fees being imposed on it. Maguire Decl., ¶ 6. As a result, the Commission's decision to order UTI to pay PUCTRA back fees in the Decision was well outside of the established scope of the proceeding, not supported by any evidentiary record, and a violation of UTI's constitutional rights to due process.

Courts have previously overturned Commission decisions in situations where the Commission has failed to proceed in a manner required by law by making decisions that went beyond the scope of issues identified in the scoping memo.[110] For instance, in *Southern California Edison Co.*, the California Court of Appeal overturned a CPUC decision concerning prevailing wage issues because the applicable scoping memo did not adequately identify prevailing wages as an issue to be considered and the parties were therefore unable to provide a fulsome response prior to the Commission issuing a decision.[111] Here, the Commission has similarly included in its Decision an issue (UTI's payment of PUCTRA back fees) that is well outside of the scope of issues the Phase III.B Scoping Ruling identified.

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[108] Phase III.B Scoping Ruling, at 2.

[109] Phase III.B Scoping Ruling, at 3-8.

[110] *S. Cal Edison Co. v. Pub. Util. Comm'n*. 140 Cal. App. 4th 1085, 1106 (2006).

[111] *Id*.

2. The Commission Is Required to Develop a Record To Support the Imposition of Regulatory Fines Through a Formal Adjudicatory or Enforcement Proceeding.

The Commission must also determine in connection with the issuance of a scoping memo whether each proceeding is quasi-legislative, an adjudication, or a ratesetting proceeding.[112] The Phase III.B Scoping Ruling re-confirmed the existing categorization of this proceeding as quasi-legislative.[113]

Under Rule 1.3 of the CPUC's Rules of Practice and Procedure, "quasi-legislative" proceedings are defined as "proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry." In contrast, an "adjudicatory" proceeding is defined to include any proceeding that involves "enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission."[114] Rule 7.1(e) requires that in exercising its discretion to categorize a particular proceeding, the Commission "shall so categorize a proceeding and shall make such other procedural orders as best to enable the Commission to achieve a full, timely, and effective resolution of the substantive issues presented in the proceeding."[115]

By classifying this phase of the proceeding as "quasi-legislative," the Commission failed to give UTI notice that the Commission was considering taking adjudicatory-type action against UTI (*i.e.*, the imposition of PUCTRA back fees). Had the Commission provided UTI with such

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[112] *See* Pub. Util. Code § 1701.1.

[113] *See* Phase III.B Scoping Ruling at 12.

[114] Rule 1.3.

[115] *Id*. at Rule 7.1(e)(3)

notice, UTI could have submitted further information and argument demonstrating why the imposition of such back fees is unlawful and inappropriate. UTI also would likely have requested an evidentiary hearing to further develop the evidentiary record with respect to PUCTRA fees.

In *Southern California Edison Co.*, the California Court of Appeal explained that the Commission adopted its Rules of Practice and Procedure pursuant to its rulemaking authority, and that these rules "[have] the force and effect of law."[116] By failing to properly classify this phase of the proceeding as "adjudicatory" consistent with its own Rules of Practice and Procedure, the Commission has failed to proceed in a manner required by law, prejudiced UTI's ability to fully defend itself and provide a complete evidentiary record, and violated UTI's constitutional rights to due process.

D. The Commission Should Grant Oral Argument on this Application for Rehearing.

The Commission should grant oral argument on this application for rehearing under the CPUC Rules of Practice and Procedure 16.3 because oral argument will materially assist the Commission in understanding and resolving the constitutional and due process arguments the application raises, the incompleteness of the record and the due process issues that such an incomplete record raises, and the many ways the Decision departs from Commission and court precedent.

The Commission should also grant oral argument because this application for rehearing raises issues of major significance for the Commission, including that the Decision would unlawfully and improperly attempt to regulate UTI as both a TNC and TCP and assess PUCTRA back fees against UTI with no legal or factual basis.

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[116] *S. Cal Edison Co.*, 140 Cal. App. 4th at 1092 n.3.

VI. CONCLUSION

For the foregoing reasons, and because the Commission's decision exceeds its powers or jurisdiction, is unsupported by the findings, makes findings unsupported by substantial evidence, constitutes an abuse of discretion, and violates UTI's constitutional rights, the Commission should grant this Application for Rehearing and request for oral argument.

/s/

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Attorneys for Uber Technologies, Inc., Rasier-CA, LLC, Uber-USA, LLC, and UATC, LLC

June 1, 2018

DECLARATION OF THOMAS MAGUIRE IN SUPPORT OF THE APPLICATION OF UBER TECHNOLOGIES, INC., RASIER-CA, LLC, UBER-USA, LLC, AND UATC, LLC FOR REHEARING OF DECISION 18-04-005

I, Thomas Maguire, declare:

1. I am General Manager, West U.S, for Uber Technologies, Inc. ("UTI").

2. In this capacity, I have knowledge of the corporate structure of UTI and its affiliated entities, including Rasier-CA, LLC ("Rasier-CA") and Uber-USA, LLC ("Uber USA").

3. I make this declaration in support of the Application of UTI, Rasier-CA, Uber USA, and UATC for Rehearing of Decision ("D.") 18-04-045.

4. UTI is a technology company that develops, acquires, and licenses software applications. At this time, those applications include: the Uber App (offered by UTI's subsidiaries, Rasier-CA and Uber USA, to independent providers of transportation services), the Uber Eats: Food Delivery App (offered by UTI's subsidiary, Portier, LLC, to independent providers of food delivery), and the Uber Freight App (offered by UTI's subsidiary, Uber Freight, to independent providers of freight delivery services).

5. UTI also licenses its software applications to a number of unaffiliated companies including Getaround, which independently provides rental car services, and taxi companies, which independently provides taxi services.

6. The Commission's issuance of the Proposed Decision was UTI's first notice of the possibility of PUCTRA back-fees being imposed on it.

Background Regarding Rasier-CA

7. Rasier-CA is a Delaware-organized limited liability company that is independently qualified to do business in the State of California.

8. Rasier-CA has two appointed managers, who are separate and distinct from UTI's directors and board.

9. Rasier-CA is subject to an intercompany agreement that establishes a service fee for UTI to provide shared services to Rasier-CA.

10. Rasier-CA holds a TNC permit issued by the Commission, as well as a license from UTI to use UTI's intellectual property and the Uber trademark.

11. Rasier-CA is not a joint account holder with UTI at any bank, savings and loan, or other financial institution.

12. The only TNC entity to whom UTI currently licenses the Uber App in California is Rasier-CA.

13. Rasier-CA enters into agreements with and provides payment processing services on behalf of independent third party transportation providers who use the Uber App to seek and accept ride requests ("driver-partners") and charges the driver-partner a service fee for use of the Uber App.

14. In instances where modifying the Uber App is necessary for Rasier-CA to remain in compliance with TNC regulations, UTI has readily cooperated by implementing those modifications so that Rasier-CA can satisfy its regulatory requirements.

15. Rasier-CA is an independent party to numerous legally enforceable contracts, including approximately fifteen airport operating agreements to date and registration with the DMV's EPN program.

16. Rasier-CA has already paid PUCTRA fees due for TNC trips that were facilitated through the Uber app the prior three years.

Background Regarding Uber USA

17. Uber USA is a Delaware-organized limited liability company that is independently qualified to do business in the State of California.

18. Uber USA is a wholly-owned subsidiary of UTI that holds a perpetual and non-exclusive license for UTI's intellectual property and trademark.

19. Uber USA licenses the Uber App to TCP permit holders, through which their individual driver-partners connect to their riders.

20. Uber USA is the entity that contracts with licensed TCP holders in California.

21. Uber USA has two appointed managers rather than a board of directors. These managers are separate and distinct from UTI's directors and board.

22. Uber USA is governed by a separate operating agreement from UTI.

23. Uber USA is subject to an intercompany agreement that establishes a service fee for UTI to provide shared services to Uber USA.

24. Uber USA maintains its own bank accounts, which are separate from those held by UTI.

25. Uber USA is not a joint account holder with UTI at any bank, savings and loan, or other financial institution.

26. Like Rasier-CA, Uber USA charges the TCP holders a service fee for use of the Uber App.

27. Because each licensee holds his or her own TCP permit, a TCP holder who enters into an agreement with Uber USA is individually responsible for complying with the

Commission's TCP regulations, such as paying PUCTRA fees for the charter-party services he or she provides.

28. Uber USA recognizes that it may be more efficient for it to collect and remit payment for all PUCTRA fees on behalf of the individual TCPs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31 day of May 2018, in San Francisco, California.

Thomas Maguire
General Manager, West U.S.
Uber Technologies, Inc.

DECLARATION OF AUSTIN GEIDT IN SUPPORT OF THE APPLICATION OF UBER TECHNOLOGIES, INC., RASIER-CA, LLC, UBER USA, LLC, AND UATC, LLC FOR REHEARING OF DECISION 18-04-005

I, Austin Geidt, declare:

1. I am Head of Strategy and Operations for the Advanced Technologies Group ("ATG") at Uber Technologies, Inc. ("UTI"), which operates under UTI's subsidiary UATC, LLC ("UATC").

2. I make this declaration in support of the Application of UTI, Rasier-CA, LLC ("Rasier-CA"), Uber USA, LLC ("Uber USA"), and UATC for Rehearing of Decision 18-04-045.

3. UATC is a subsidiary of UTI. UATC holds a TCP permit issued by the California Public Utilities Commission ("Commission").

4. UATC develops self-driving technology and owns self-driving vehicles located in California and Pennsylvania, among other locations.

5. UATC is organized as a Delaware limited liability company.

6. UATC operates in accordance with the Delaware Limited Liability Company Act, is governed by a separate operating agreement, and is registered with the Secretary of State to operate in California.

7. UATC received a permit from the California DMV to test autonomous vehicles on March 8, 2017, and continued to hold that permit until it expired on March 31, 2018.

8. UATC obtained a Commission TCP permit in anticipation of offering passenger transportation services to members of the public using vehicles owned and operated by UATC.

9. Any TCP services provided directly to consumers by UATC would be distinct from the services that Uber USA offers via its agreements with individual TCP holders.

10. UATC employs vehicle operators in California, and has an auto liability policy issued by Old Republic Insurance Company that is separate from the auto liability policies that cover Rasier-CA's TNC business.

11. UATC leases real estate in California and Pennsylvania, among other locations.

12. UATC maintains its own bank accounts, which are separate from those held by UTI.

13. UATC is not a joint account holder with UTI at any bank, savings and loan, or other financial institution.

14. UATC has paid its PUCTRA fees.

15. UATC does not license the Uber App to independent drivers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this first day of June 2018, in San Francisco, California.

Austin Geidt
Head of ATG Strategy and Operations
Uber Technologies, Inc.